

REMARKS

In the Office Action mailed on January 6, 2004, claims 16-19, 21-32 and 34-44 were rejected. Claims 16-19, 21-32 and 34-44 remain pending in the present application. Reconsideration and allowance of all pending claims is requested.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 16-19, 21-27 and 36-41 under 35 U.S.C. § 103(a) as being obvious over the reference of Frid et al. (U.S. 5,857,967) in view of the reference of Gat (U.S. 5,954,663) and the reference of Bates et al. (U.S. 5,907,681). In addition, the Examiner rejected claims 28-32, 34-35 and 42-44 under 35 U.S.C. § 103(a) as being obvious over the Frid et al. reference (alone or in view of the Gat reference) and the Bates et al. reference. The Applicants respectfully traverse these rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d

1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Claims 16 and 28 and their dependent claims

With regard to claim 16 and its dependents, a method of monitoring a fetal condition is recited. Similarly, claim 28 and its dependents recite a corresponding system for monitoring a fetal condition. As noted in previous correspondence, the Applicants believe that one or more of the recitations of claims 16 and 28 are absent from the combination of references relied upon by the Examiner.

One such recitation in claim 16 is "...wherein the presentation is transmitted in a real time mode or in a historical mode...." Claim 28 recites a corresponding system recitation. In the present Office Action and the preceding Action, the Examiner has insistently equated the recited "real time" and the "historical" modes of transmission with the concept of whether data is updated or not updated, respectively. With respect to this position, the Examiner relies on the concept of a network browser which may be configured to auto-refresh or not. Applicants respectfully note, however, that the configuration of a network browser to auto-refresh does not in any way impact the *transmission* of data by the target site. Instead, such a configuration affects the characteristics of the browser (*not* the target site) to request available updates. Indeed, if the browser is not configured to auto-refresh, there is *no* transmission of data from the target site since the browser does not request a transmission. However, even if there was such a transmission, it would not be in a "historical mode," but would instead reflect the current, i.e., *real-time* data at the target site. In other words, turning off the auto-refresh on a web browser does not somehow cause a target site to transmit in a "historical mode," as recited and as interpreted above. To the contrary, when a target site is queried for updates, it transmits the current data at the site. As the Examiner will appreciate, however, a

browser configured *not* to auto refresh does not query for updates and, therefore, does not provoke a transmission of any sort, much less a transmission in a historical mode.

In brief, the term “historical mode,” as recited, clearly relates to the *transmission* of the presentation. The refresh rate setting of a browser, however, in no way determines what data is *transmitted* by a site, but only determines how often the browser requests updates of the current data at the site. If the Examiner can provide any example of how adjusting the refresh rate of a browser causes a target site to *transmit* in a historical mode, we respectfully request that he do so.

Therefore, even if the Bates et al. reference were to disclose what the Examiner alleges, it does not disclose the *transmission* of a general purpose network presentation in a historical mode, as recited by claims 16 and 28. Indeed, a generous reading of the Bates et al. reference fails to disclose any mention of a historical mode of transmission by a target site and confirms that the Bates et al. reference simply addresses techniques for automatically selecting web browser refresh rates. Therefore, in view of the absence of a historical mode of transmission in the Frid et al., Gat, and Bates et al. references, the cited combination of references fails to support a *prima facie* case of obviousness. Therefore, claims 16 and 28, and those claims depending therefrom, are believed allowable over the cited combination of references.

Claim 23 and its dependent claims

With regard to claim 23 and its dependents, the Applicants respectfully note that the transmission of an updated interface page in a historical mode by a server is recited. For the reasons set forth above, the recitation of a transmission in such a historical mode is absent from the cited combination of references.

In addition, the Applicants note that the Examiner has failed to address the previous arguments made by the Applicants with respect to claim 23, as required by M.P.E.P. § 707.07(f). In particular, in the preceding response the Applicants noted that claim 23 recites the presence of user selectable command devices that are included on the interface page. Such user selectable command devices are discussed on page 11 of the application at lines 23-31 and at Fig. 4. Examples provided of such user selectable command devices include buttons for fast reverse to start, fast reverse, stop, forward, fast forward, fast forward to stop, zoom-in and zoom-out. Application, p. 11, lines 26-31.

In the present and the preceding Office Actions the Examiner has failed to indicate that such user selectable command devices are disclosed in the cited combination of references. The Applicants believe this failure on the part of the Examiner is due to the absence of these command devices from the three cited references. Therefore, in order to maintain the present rejection, the Applicants once again request that the Examiner provide a specific citation to one of the cited references which discloses the recited command devices. Absent such a citation by the Examiner, and in view of the deficiency of the cited references with regard to transmission in a historical mode, the cited combination of references fails to support a *prima facie* case of obviousness. Therefore, claim 23 and those claims depending from claim 23 are believed allowable over the cited combination of references.

Conclusion

In view of the remarks set forth above, Applicants respectfully request reconsideration and allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: May 24, 2004



John M. Rariden
Reg. No. 54,388
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545